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**IN THE
COURT OF APPEALS OF INDIANA**

APPEAL FROM THE CLAY SUPERIOR COURT
The Honorable J. Blaine Akers, Judge
Cause No. 11D01-0706-CM-228

NAJAM, Judge

STATEMENT OF THE CASE

Cody Wright appeals his conviction for Reckless Driving, a Class B misdemeanor, following a bench trial. He presents a single dispositive issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We reverse.

FACTS AND PROCEDURAL HISTORY

On May 25, 2007, Wright was driving eastbound on County Road 1000 North in Clay County when Clay County Sheriff's Deputy Chris Robinson observed Wright speeding. Deputy Robinson clocked Wright's speed at sixty-two miles-per-hour, and the posted speed limit at that location is thirty-five miles-per-hour. Deputy Robinson, who had been parked on a private road off of 1000 North, followed Wright and initiated a traffic stop. During the time that Deputy Robinson observed Wright speeding, Deputy Robinson did not observe any pedestrians or other vehicles in the immediate vicinity. In addition, just prior to initiating the traffic stop, Deputy Robinson observed Wright come to a complete stop, without difficulty, at a four-way stop.

The State charged Wright with reckless driving, a Class B misdemeanor. Following a bench trial, the trial court found Wright guilty as charged and imposed the maximum 180-day sentence. This appeal ensued.

DISCUSSION AND DECISION

Wright contends that the State did not present sufficient evidence to support his conviction. In particular, Wright maintains that the evidence is insufficient to prove that he endangered the safety or property of others. We must agree.

When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove reckless driving, the State was required to prove that Wright operated a motor vehicle and recklessly drove at such an unreasonably high rate of speed under the circumstances as to endanger the safety or the property of others. Ind. Code § 9-21-8-52(a). While the State presented undisputed evidence that Wright was driving almost twice the speed limit, there was no evidence that Wright endangered the safety or property of others. Deputy Robinson explained his reasons for issuing the reckless driving citation as follows: “[t]he considerations were the high speed in the area, almost double the speed limit; it began to rain, the roads were slick; and there was a lot of traffic that was going to be traveling up and down the road, school buses, kids getting off of school.” Transcript at 28 (emphasis added). Deputy Robinson’s testimony was unequivocal that at the time he observed Wright speeding, his was the only vehicle in the vicinity, and there were no pedestrians present. And Deputy Robinson testified that, prior to the traffic stop, Wright came to a complete stop at a stop sign without difficulty.

In Jackson v. State, 576 N.E.2d 607, 609 (Ind. Ct. App. 1991), this court held the evidence insufficient to support a reckless driving condition where the defendant drove a motorcycle in a reckless manner, including: making a “semi-circle skid” in the middle of

a major city street; driving through the yard of his own house; spinning the tire while stationary, causing dirt to kick up; driving approximately forty-five miles per hour down an alley; and making a turn, without stopping first, at approximately twenty miles per hour. In holding the evidence insufficient, we noted that the record was “utterly bereft of any indication, either from direct or circumstantial evidence, that Jackson endangered the safety or property of another.” Id. There was no evidence of pedestrians or other drivers in the vicinity of the defendant at the time of the offense, and the only property he damaged was his own front yard. Id.

Likewise, here, the evidence only shows that Deputy Robinson was concerned for the safety of children who were about to be let out of school. But there is no evidence that anyone was present and in actual danger at the time of Wright’s speeding offense. Wright’s conviction for reckless driving is, therefore, reversed.¹

Reversed.

BAKER, C.J., and KIRSCH, J., concur.

¹ The State cites to this court’s opinion in State v. Seymour, 177 Ind. App. 341, 379 N.E.2d 535 (1978), as support for affirming Wright’s conviction. But in Seymour, a prior version of the reckless driving statute applied, and that statute was worded very differently from the present statute. Moreover, in Seymour, there was evidence that fences and farmhouses lined the ice- and snow-covered road on which the defendant was speeding. Thus, there was evidence that the defendant was endangering the property of others as he drove. We find Seymour inapposite here.